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## BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

APR 12 2006

JEFF HATCH-MILLER, Chairman  
 WILLIAM A. MUNDELL  
 MARC SPITZER  
 MIKE GLEASON  
 KRISTIN K. MAYES

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF  
 ACC TELECOMMUNICATIONS, LLC dba  
 ADELPHIA FOR A CERTIFICATE OF  
 CONVENIENCE AND NECESSITY TO PROVIDE  
 INTRASTATE, FACILITIES-BASED, NON-  
 SWITCHED, DEDICATED POINT-TO-POINT  
 DATA TRANSPORT TELECOMMUNICATIONS  
 SERVICES IN THE STATE OF ARIZONA AND  
 PETITION FOR COMPETITIVE  
 CLASSIFICATION OF PROPOSED SERVICES.

DOCKET NO. T-04282A-04-0763

DECISION NO. 68650OPINION AND ORDER

DATE OF HEARING:

May 2 and June 29, 2005

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Teena Wolfe

APPEARANCES:

Jo Gentry, Director of External Affairs, on behalf  
 of ACC Telecommunications, LLC dba  
 Adelphia; and

Keith A. Layton, Staff Attorney, Legal Division,  
 on behalf of the Utilities Division of the Arizona  
 Corporation Commission.

**BY THE COMMISSION:**

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the  
 Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On October 22, 2004, ACC Telecommunications, LLC dba Adelphia ("Applicant")  
 submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of  
 Convenience and Necessity ("CC&N") to provide intrastate, facilities-based, non-switched, dedicated  
 point-to-point data transport telecommunications services, which will allow the customer to connect  
 directly two or more intrastate locations with dedicated, non-switched services, throughout the State

1 of Arizona. The application petitioned the Commission for determination that its proposed services  
2 should be classified as competitive.

3 2. On March 1, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff  
4 Report recommending approval of the application.

5 3. On March 10, 2005, a Procedural Order was issued setting a hearing for May 2, 2005  
6 and requiring publication of notice of the hearing.

7 4. On April 5, 2005, an Affidavit of Publication was filed certifying that notice of the  
8 hearing on the application was published in The Arizona Republic on April 1, 2005.

9 5. No intervention requests were filed.

10 6. The hearing was convened as scheduled on May 2, 2005. No members of the public  
11 appeared to provide comment. Staff appeared through counsel. Applicant failed to appear.

12 7. By Procedural Order issued May 3, 2005, the hearing was continued to May 26, 2005,  
13 and the timeclock for a Commission Decision on the application was suspended pending the  
14 continuation of the hearing.

15 8. On May 26, 2005, Applicant filed a motion seeking continuance of the May 26, 2005  
16 hearing date due to an unexpected emergency conflict. The motion stated that Applicant had  
17 consulted with Staff, and that Staff did not object to the requested continuance.

18 9. By Procedural Order issued May 26, 2005, the hearing was continued to June 29,  
19 2005.

20 10. The hearing was reconvened on June 29, 2005, as scheduled. Jo Gentry testified  
21 telephonically on behalf of Applicant and was represented by counsel. Staff appeared and was  
22 represented by counsel. The hearing was conducted before a duly authorized Administrative Law  
23 Judge. Evidence was presented and testimony was taken. A schedule was set for the briefing of legal  
24 issues, including the lawfulness of the individual case basis ("ICB") pricing included in Applicant's  
25 proposed tariffs.

26 11. On July 27, 2005, Applicant and Staff filed legal briefs. Applicant stated on brief that  
27 it would file a tariff including minimum and maximum price ranges for all its proposed services.  
28 Staff stated on brief that if Applicant were to submit an amended application, Staff would file an

1 amended Staff Report based upon its review of the amended application.

2 12. On August 1, 2005, Applicant filed a Notice of Errata.

3 13. On September 16, 2005, Applicant filed an amended tariff. The revised tariff did not  
4 include ICB pricing. The tariffs were also corrected to indicate that Applicant will not collect any  
5 advance payments or deposits, as was discussed by Applicant's witness at the hearing.

6 14. On December 20, 2005, a Procedural Order was issued directing Staff to file an  
7 amended Staff Report including an analysis of Applicant's amended tariff, and Staff's  
8 recommendation to the Commission regarding action on the application, based on that analysis.

9 15. On January 20, 2006, Staff filed its Amended Staff Report. The Amended Staff  
10 Report recommends approval of the application, stating that Staff has reviewed the amended tariff  
11 and determined that the terms and conditions for services within the amended tariff are similar to  
12 those of the dominant incumbent local exchange provider ("ILEC") in Arizona, with proposed rates  
13 essentially equal to those of the dominant ILEC and in some cases lower.

14 16. Applicant is a limited liability company organized under the laws of the State of  
15 Delaware and has been authorized to do business in Arizona since August 16, 2004.

16 17. Applicant has the technical and managerial capabilities to provide the services that are  
17 proposed in its application.

18 18. Applicant will be providing services in areas where ILECs, along with various  
19 competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone  
20 and private line services. Applicant's witness stated that the only area where Applicant currently has  
21 facilities in place in Arizona is in the vicinity of Yuma, Arizona.

22 19. Staff recommended that Applicant's proposed services be classified as competitive  
23 because there are alternatives to Applicant's services; Applicant will have to convince customers to  
24 purchase its services; Applicant has no ability to adversely affect the local exchange, interexchange,  
25 or point-to-point dedicated data service markets; and Applicant will therefore have no market power  
26 in those local exchange, interexchange, or point-to-point dedicated data service markets where  
27 alternative providers of telecommunications services exist.

28 20. It is appropriate to classify all of Applicant's authorized services as competitive.

1       21.     According to the Staff Report, Applicant provided unaudited financial statements,  
2 including notes, of its parent company, Adelphia Communications Corporation,<sup>1</sup> for the 26 months  
3 ending August 4, 2004. The financial statements listed current assets in excess of \$52 billion; total  
4 equity in excess of \$2 billion; and a net loss in excess of \$1.2 billion.

5       22.     The Staff Report stated that Consumer Services reports no complaint history for  
6 Applicant within Arizona. Applicant has not had an application for service denied or authority  
7 revoked in any state. There have been no civil or criminal proceedings involving Applicant. The  
8 Staff Report stated that Applicant indicated in its application that two former board members of  
9 Adelphia Communications Corporation, Applicant's parent, John Rigas and Tim Rigas, were  
10 involved in several criminal matters involving fraud within Adelphia Communications Corporation.  
11 At the hearing, Applicant's witness testified that John and Tim Rigas had been convicted on various  
12 fraud counts and that no member of the Rigas family currently has any involvement in the  
13 management or business operations of Adelphia or any of its affiliates. Applicant's witness also  
14 testified that Applicant's current management team is operating totally independently of any of the  
15 "historical situations" that led to the fraud convictions.

16       23.     Staff recommended that Applicant be granted a CC&N to provide the requested  
17 telecommunications services. In addition, Staff recommended the following:

- 18           a.     That the Applicant be required to notify the Commission immediately upon  
19 changes to the Applicant's name, address or telephone number;
- 20           b.     That the Applicant comply with all Commission rules, orders, and other  
21 requirements relevant to the provision of intrastate telecommunications  
22 service;
- 23           c.     That the Applicant maintain its accounts and records as required by the  
24 Commission;
- 25           d.     That the Applicant file with the Commission all financial and other reports that  
26 the Commission may require, and in a form and at such times as the  
27 Commission may designate;

28 <sup>1</sup> Adelphia Communications Corporation was still in bankruptcy at the time of the hearing. Applicant's witness testified that Applicant has bankruptcy approval to proceed with the normal course of business, including the funding of normal course of business operations.

- 1 e. That the Applicant maintain on file with the Commission all current tariffs and  
2 rates, and any service standards that the Commission may require;  
3 f. That the Applicant cooperate with Commission investigations including, but  
4 not limited to, customer complaints;  
5 g. That the Applicant abide by and participate in the AUSF mechanism  
6 established in A.A.C. R14-2-1204(B)(3)(b);  
7 h. That if in the future, Applicant wishes to provide telecommunications services  
8 different from those addressed in this application, that Applicant be required to  
9 file an application with the Commission so indicating; and  
10 i. That the Applicant be required to notify each of its private line service  
customers and the Commission 60 days prior to filing an application to  
discontinue service pursuant to A.A.C. R14-2-1107 in the event Applicant  
desires to discontinue service.

11 24. Staff further recommended that Applicant be ordered to docket conforming tariffs for  
12 its point-to-point dedicated data service within 365 days from the date of an Order in this matter or 30  
13 days prior to providing service, whichever comes first, and in accordance with this Decision. Staff  
14 recommended that if Applicant fails to timely comply with this recommendation, Applicant's CC&N  
15 become null and void.

16 25. At the hearing, Applicant agreed to comply with all of Staff's recommendations

17 26. Based on information obtained from Applicant, Staff determined that Applicant's fair  
18 value rate base ("FVRB") is zero and too small to be useful in a fair value analysis. In general, rates  
19 for competitive services are not set according to rate of return regulation. Staff stated that as a new  
20 entrant to the point-to-point dedicated data services market, Applicant will have to compete with  
21 several existing companies in order to obtain customers, and would generally not be able to exert  
22 market power. Staff reviewed the rates in Applicant's revised tariffs filed on September 16, 2005,  
23 and determined that the terms and conditions for services within the amended tariff are similar to  
24 those of the dominant ILEC in Arizona, with proposed rates essentially equal to those of the  
25 dominant ILEC and in some cases lower. Staff stated that while it considered Applicant's FVRB  
26 information, it did not believe the information deserved substantial weight in setting Applicant's  
27 rates.

28 27. The rates ultimately charged by Applicant will be heavily influenced by the market.

1 Because of the nature of the competitive market and other factors, a fair value analysis is not  
2 necessarily representative of Applicant's operations.

3 28. Staff's recommendations, as set forth herein, are reasonable.

4 29. Applicant's fair value rate base is determined to be zero for purposes of this  
5 proceeding.

#### 6 CONCLUSIONS OF LAW

7 1. Applicant is a public service corporation within the meaning of Article XV of the  
8 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

9 2. The Commission has jurisdiction over Applicant and the subject matter of the  
10 application.

11 3. Notice of the application was given in accordance with the law.

12 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a  
13 CC&N to provide competitive telecommunications services.

14 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised  
15 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth  
16 in its application.

17 6. Applicant is a fit and proper entity to receive a CC&N authorizing it to provide  
18 intrastate, facilities-based, non-switched, dedicated point-to-point data transport telecommunications  
19 services, which will allow the customer to connect directly two or more intrastate locations with  
20 dedicated, non-switched services, throughout the State of Arizona.

21 7. The telecommunications services that Applicant intends to provide are competitive  
22 within Arizona.

23 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,  
24 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are  
25 not less than the Applicant's total service long-run incremental costs of providing the competitive  
26 services approved herein.

27 9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

28 10. The maximum rates as set forth in Applicant's revised proposed tariffs filed on



1 September 16, 2005 are just and reasonable and should be approved.

2 **ORDER**

3 IT IS THEREFORE ORDERED that the application of ACC Telecommunications, LLC dba  
4 Adelphia for a Certificate of Convenience and Necessity to provide intrastate, facilities-based, non-  
5 switched, dedicated point-to-point data transport telecommunications services, which will allow the  
6 customer to connect directly two or more intrastate locations with dedicated, non-switched services,  
7 throughout the State of Arizona is hereby approved.

8 IT IS FURTHER ORDERED that ACC Telecommunications, LLC dba Adelphia shall file  
9 with Commission Docket Control, as a compliance item in this matter, tariffs for its point-to-point  
10 dedicated data service that conform to the revised tariffs filed on September 16, 2005, within 365  
11 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes  
12 first.

13 IT IS FURTHER ORDERED that if ACC Telecommunications, LLC dba Adelphia fails to  
14 timely comply with the preceding Ordering Paragraph, that the Certificate of Convenience and  
15 Necessity granted herein shall become null and void after due process.

16 IT IS FURTHER ORDERED that ACC Telecommunications, LLC dba Adelphia shall  
17 comply with all of the Staff recommendations set forth in Findings of Fact No. 23 above.

18 IT IS FURTHER ORDERED that in the event ACC Telecommunications, LLC dba Adelphia  
19 desires to discontinue service, ACC Telecommunications, LLC dba Adelphia shall notify each of its  
20 private line service customers and the Commission 60 days prior to filing an application to  
21 discontinue service pursuant to A.A.C. R14-2-1107.

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IT IS FURTHER ORDERED that the services ACC Telecommunications, LLC dba Adelphia is authorized to provide herein are hereby classified as competitive.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
CHAIRMAN

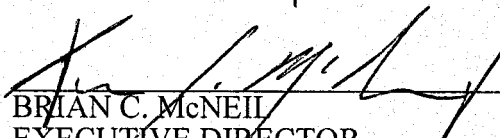
  
COMMISSIONER

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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 12<sup>th</sup> day of April, 2006.

  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

TW:mlj



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